ERID-250970

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*Date:* NOV 07 2013
*Refer To:* EP2013-0256

John Kieling, Bureau Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505-6303

**Subject: Evaluation of Compliance Order on Consent Deliverables Due to Flooding and Lapse in Appropriations Force Majeure Events**

Dear Mr. Kieling:

The U.S. Department of Energy and Los Alamos National Security, LLC (DOE/LANS) submitted two letters documenting that force majeure events had occurred that may cause delays in or prevent DOE/LANS from completing obligations under the March 2005 Compliance Order on Consent (Consent Order). Both letters, dated September 25, 2013, and October 3, 2013, were submitted pursuant to the requirement in Section III.H.3 of the Consent Order.

The flood event in September 2013 inflicted significant damage to the Los Alamos National Laboratory (the Laboratory) infrastructure, especially in the canyon bottoms where DOE/LANS conduct groundwater and surface water monitoring. Several roads were impassable and in some cases completely washed away, thus preventing vehicle and pedestrian access to several groundwater monitoring wells, surface water gage stations, and corrective action projects. For example, at the Sandia Canyon Wetlands grade-control structure, a considerable volume of standing water had to be pumped out of the area, and significant amounts of sediment were deposited that required removal. Following both the removal of standing water and excess sediment, DOE/LANS had to allow time for the area to dry before site restoration could commence.

Further, the lapse in federal appropriations in October 2013 resulted in the suspension of the majority of programs and activities conducted under the Consent Order for a total of 18 working days. The lapse in appropriations began on October 1, 2013, and continued until October 18, 2013 (13 days). Following this programmatic pause, an additional 5 working days were necessary to safely restart field activities and to allow subcontractors to return to work. Normal operations resumed on October 28, 2013.

DOE/LANS have evaluated the potential Consent Order deliverables that may have been impacted by one or both of the force majeure events and have developed a list of impacted documents (Attachment 1). Attachment 1 identifies the (1) document title; (2) applicable impacting event (i.e., flooding, lapse in appropriations, or both); (3) current due dates; and (4) proposed new due dates for the deliverables. This table addresses only deliverables with known impacts at this time (i.e., those due to New Mexico Environment Department [NMED] in the first quarter of fiscal year (FY) 2014 (October 1–December 31).

DOE/LANS have made every effort to minimize impacts to its obligations under the Consent Order. For example, immediately following the flood event, DOE/LANS initiated repairs to critical infrastructure (e.g., roads, gage stations) to gain access to project sites, monitoring wells, and sampling equipment. Within a week of the flood event, the Buckman gage stations (E050 and E060) were repaired and operational. Additionally, because the access road to wells R-28 and R-42 (i.e., chromium interim measure wells) were destroyed, DOE/LANS began manual refueling of the R-28 generators to keep this high-priority project operating.

Although substantial progress has been made on repairs to infrastructure resulting from the September flood event, there is significant damage in need of repair. Therefore, there may be unexpected future impacts on Consent Order work scope. If any unforeseen impacts result from the September floods or the October lapse in appropriations, DOE/LANS will notify NMED as soon as practicable. Please also note that DOE/LANS will be submitting extension requests for a number of other deliverables due to NMED during the first quarter of FY2014.

If you have any questions, please contact Kathryn Roberts at (505) 665-0006 (kroberts@lanl.gov) or David Rhodes at (505) 665-5325 (david.rhodes@nnsa.doe.gov).

Sincerely,

Jeff Mousseau, Associate Director
Environmental Programs
Los Alamos National Laboratory

Sincerely,

Peter Maggiore, Assistant Manager
Environmental Projects Office
Los Alamos Field Office

JM/PM/DM/TG:sm

Attachment: Consent Order Milestones Impacted by Force Majeure Events

Cy: (w/att.)
Laurie King, EPA Region 6, Dallas, TX
Tom Skibitski, NMED-DOE-OB (date-stamped letter emailed)
Steve Yanicak, NMED-DOE-OB, MS M894
lasomailbox@nnsa.doe.gov
Annette Russell, DOE-NA-00-LA (date-stamped letter emailed)
Keith Flodstrom, DOE-NA-00-LA (date-stamped letter emailed)
David Rhodes, DOE-NA-00-LA (date-stamped letter emailed)
Katie Roberts, EP-REG (date-stamped letter emailed)
Tori George, EP-REG (date-stamped letter emailed)
Kent Rich, EP-CAP (date-stamped letter emailed)
Dave McInroy, EP-CAP (date-stamped letter emailed)
Jeff Mousseau, ADEP (date-stamped letter emailed)
Wendy Staples, EP-REG (date-stamped letter emailed)
Public Reading Room (hard copy)
RPF (electronic copy)

# Attachment 1

| Consent Order Milestones Impacted by a Force Majeure Event | | | | | | |
|---|---|---|---|---|---|---|
| | | Flooding | Lapse in Appropriations* | Current Due Date | New Due Date | Comments |
| 1 | Completion Report for the Sandia Canyon Wetland Grade-Control Structure | ✓ | ✓ | 22-Nov-2013 | 20-Dec-2013 | 18 working day impact from lapse in appropriations. (Note that the November 22, 2013, current due date was set out in the DOE/LANS force majeure letter dated September 25, 2013. This September 25, 2013, letter also described the specific impacts from flooding assocated with this work.) |
| 2 | Proposed Location for Regional Aquifer Well R-59 | | ✓ | 31-Oct-2013 | 27-Nov-2013 | 18 working day impact from lapse in appropriations. Also, pending NMED response to Material Disposal Area C corrective measures evaluation (submitted September 30, 2012). DOE/LANS anticipates submitting an extension request for this deliverable. |
| 3 | October 2013 Semiannual Progress Report for Corrective Measures Evaluation/Corrective Measures Implementation for Consolidated Unit 16-021(c)-99 | | ✓ | 31-Oct-2013 | 27-Nov-2013 | 18 working day impact from lapse in appropriations. |
| 4 | Monthly email update on the progress of the Office of State Engineer application progress required by NMED's June 26, 2013 Approval with Modification for the Interim Measures Work Plan for the Evaluation of Chromium Mass Removal | | ✓ | 7-Oct-2013 | 7-Nov-2013 | 18 working day impact from lapse in appropriations impacted submittal of the update for September (due October 7, 2013). We will combine the September and October information into one update and submit this combined information by the November 7, 2013, due date for the October update. |
| 5 | Interim Measures Report for Source Removal Testing at Well CdV-16-4ip | | ✓ | 13-Dec-2013 | 31-Jul-2014 | 18 working day impact from lapse in appropriations and subsequent loss of field season. |
| 6 | 2013 Biennial Asphalt Monitoring and Removal Report for Area of Concern C-00-041, Guaje/Barrancas/Rendija Canyons Aggregate Area | | ✓ | 31-Dec-2013 | 29-Jan-2014 | 18 working day impact from lapse in appropriations. |
| 7 | 2013 Biennial Ordnance Survey Report, Solid Waste Management Units 00-011(a, d, & e) | | ✓ | 31-Dec-2013 | 29-Jan-2014 | 18 working day impact from lapse in appropriations. |
| 8 | R-63i Well Completion Summary Fact Sheet | | ✓ | 31-Dec-2013 | 29-Jan-2014 | 18 working day impact from lapse in appropriations. DOE/LANS anticipate submitting an extension request for this deliverable. |
| 9 | Summary Report for Direct Current Resistivity Profiling in Cañon de Valle | | ✓ | 15-Jan-2014 | 30-May-2014 | 18 working day impact from lapse in appropriations and subsequent loss of field season. |
| 10 | Storm Water Performance Monitoring in the Los Alamos/Pueblo Watershed during 2013 & the Sediment Transport Mitigation Project Monitoring Plan for 2013 | ✓ | ✓ | 31-Mar-2014 | 30-Jun-2014 | Impacts from flooding: significant damage to roads and infrastructure; unstable conditions in the canyons precluded vehicle and pedestrian access; standing water in retention structures. Also, 18 working day impact from lapse in appropriations and subsequent loss of field season. |
| | *Lapse in appropriations = 18 working days (13 workings days of lapse in appropriations (10/1 - 10/18), and 5 working days of remobilization actvities) | | | | | |